

D7ATBERA

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

07 CR 862 (AKH)

5 DANIEL BERRERA BERRERA,

6 Defendant.

7 -----x

8 New York, N.Y.

9 July 10, 2013

11:00 a.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the

16 Southern District of New York

JENNA DABBS

17 BENJAMIN NAFTALIS

Assistant United States Attorneys

18 ROJAS OLIVA

19 Attorneys for Defendant

RUBEN OLIVA

20 ALSO PRESENT: PAULA GOLD, Spanish interpreter

21 MICHAEL ACANFORA, SA, DEA

22 DENIS KENNEDY, SA, ICE, HSI

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(In open court)

DEPUTY CLERK: U.S. versus Berrera. Counsel, please state your appearances for the record.

MS. DABBS: Jenna Dabbs and Ben Naftalis for the government, and we're joined at counsel table by Special Agent Michael Acanfora of the Drug Enforcement Administration and Special Agent Denis Kennedy from Homeland Security Investigations, Immigration Customs Enforcement.

Good morning, your Honor.

THE COURT: Good morning, all.

MR. OLIVA: Good morning, your Honor, Ruben Oliva on behalf of Daniel Berrera Berrera, who is present with the aid of an interpreter.

THE COURT: Mr. Oliva, I have signed your motion pro hac -- Mr. Leader's motion pro hac, and we shall file it, so you will be the attorney in the case.

MR. OLIVA: Thank you, your Honor.

THE COURT: Ms. Dabbs, where do we go?

MS. DABBS: Your Honor, this is Mr. Berrera's first appearance after being extradited from Colombia and arriving in the district yesterday afternoon at about 4:30 in the afternoon.

THE COURT: Does he need to be arraigned?

MS. DABBS: He needs to be presented and arraigned to advise him of the charge in the indictment and arraigned on

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1 that charge, and then the Court will have to make a
2 determination with respect to whether he is detained or
3 released on bail conditions.

4 THE COURT: Very well. Ms Jones will do the
5 arraignment.

6 DEPUTY CLERK: Mr. Berrera, please rise.

7 You are Daniel Berrera Berrera?

8 THE DEFENDANT: Yes, your Honor.

9 DEPUTY CLERK: Is that your attorney standing next to
10 you?

11 THE DEFENDANT: Yes, your Honor.

12 DEPUTY CLERK: Have you received a copy of the
13 indictment?

14 THE DEFENDANT: Yes, your Honor.

15 DEPUTY CLERK: Would you like me to read it to you?

16 THE DEFENDANT: No.

17 THE COURT: You have the right to have the indictment
18 read in open court, Mr. Berrera, but if you already know it and
19 have gone over it with your attorney, you can tell me there's
20 no need to do that.

21 MR. OLIVA: That's correct, your Honor, we would waive
22 the reading of the indictment.

23 DEPUTY CLERK: How do you plead?

24 MR. OLIVA: Your Honor, I enter a plea of not guilty
25 on behalf of my client and demand a trial by jury.

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1 THE COURT: A plea of not guilty will be entered on
2 behalf of Mr. Berrera.

3 Mr. Oliva, I note the indictment reads Daniel Berrera
4 Berrera, is that correct?

5 MR. OLIVA: That is correct, that is his name.

6 THE COURT: So his mother's name and his father's name
7 are the same?

8 MR. OLIVA: This is correct.

9 THE COURT: Thank you.

10 Ms. Dabbs.

11 MS. DABBS: Your Honor, just a couple of more points
12 with respect to Rule 5 to make sure the defendant is advised of
13 the relevant rights. I would ask the Court to advise him that
14 he has a right not to make a statement, and any statement that
15 he might make of course can be used against him. And the
16 government is asking that he be detained pending trial in this
17 matter.

18 THE COURT: You understand, Mr. Berrera, that you are
19 not required to make a statement, and I understand that you are
20 aware of that because it was your attorney who entered a plea
21 of not guilty against you. If you make a statement, of course
22 anything you say can be used against you, so I advise you of
23 those rights.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Anything further on the advice of rights,

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1 Ms. Dabbs?

2 MS. DABBS: No, your Honor.

3 THE COURT: Mr. Oliva, anything?

4 MR. OLIVA: No, your Honor. In regards to bond, we
5 would stipulate to pretrial detention with leave to reapply if
6 circumstances were to vastly change.

7 THE COURT: My policy is always to allow a
8 reapplication for some kind of release under some kind of
9 conditions. So if your client wants that to be made and feels
10 it should be made, all you have to do is call Ms. Jones and
11 we'll schedule it.

12 MR. OLIVA: Thank you, your Honor, that will be fine.

13 THE COURT: Mr. Berrera will be detained.

14 MR. OLIVA: Thank you, your Honor.

15 THE COURT: Ms. Dabbs?

16 MS. DABBS: Your Honor, just a couple of other points.
17 We have spoken with Mr. Oliva about a potential conflict issue
18 in connection with his representation of Mr. Berrera. We're
19 continuing to speak with him about the posture of that and we
20 will, once we have sufficient information -- and we'll endeavor
21 to do that in very short order -- we will make a submission to
22 the Court on that subject in terms of whether there is a
23 proceeding that needs to be held at this stage or whether any
24 sort of conflict is not ripe at this time, but I wanted to
25 advise the Court of that at this juncture.

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1 And with respect to the production of discovery
2 materials, we have also spoken with defense counsel, and
3 consistent with the requirements of Rule 16, the government
4 will produce discovery within a brief timeline, and we can set
5 a date for that.

6 THE COURT: Describe the nature of the discovery that
7 you intend to produce.

8 MS. DABBS: The nature of the discovery in the case
9 that is Rule 16 discovery consists primarily of evidence
10 relating to seizures of cocaine that were made, one off the
11 coast of Florida and one in Venezuela. And we have reports
12 relating to those seizures, we have photographs and
13 documentation relating to those seizures. That is the primary
14 Rule 16 discovery in the case. We're not aware any of
15 statements by the defendant or anything of that nature.

16 THE COURT: Describe for my benefit the indictment.

17 MS. DABBS: Sure, Judge. The charge contained in the
18 indictment, a one-count indictment, Mr. Berrera is charged over
19 a several year period of time with conspiring with others to
20 distribute cocaine knowing and intending that that cocaine --

21 THE COURT: In this country?

22 MS. DABBS: Not in this country, but knowing and
23 intending that that cocaine would be imported into the United
24 States.

25 And the reason the extradition yesterday --

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1 THE COURT: Is knowing sufficient or do you need
2 intent?

3 MS. DABBS: I'm sorry, your Honor?

4 THE COURT: Is knowing sufficient or do you need
5 intent?

6 MS. DABBS: The statutory requirement is knowing and
7 intending, so you need specific intent that the cocaine is
8 going to be brought into the United States.

9 THE COURT: So he is conspiring with the knowledge and
10 the intent to have that narcotic imported into the United
11 States?

12 MS. DABBS: Yes, the allegations --

13 THE COURT: Brought into the United States for
14 distribution in the United States.

15 MS. DABBS: That is correct, your Honor.

16 THE COURT: OK. And is that all the Rule 16
17 production?

18 MS. DABBS: We'll certainly make sure that there's
19 nothing else which we're aware, but at the present time the
20 discovery in the government's possession consists of what I
21 have represented to the Court.

22 THE COURT: When would be -- and you can make that
23 within a week, Ms. Dabbs?

24 MS. DABBS: Pursuant to the requirements of Rule 16,
25 we certainly can make that production on that timeline, Judge.

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1 The only caveat that I would add to that is we expect, because
2 this defendant was extradited from Colombia, to be making a
3 request to Colombian authorities for evidence in connection
4 with this case and other investigations. And that will
5 certainly lag behind what we can provide to defense counsel
6 now, what's currently in our possession.

7 THE COURT: Wasn't the evidence furnished to the
8 Colombian authorities incident to the extradition?

9 MS. DABBS: It's not -- what I am referring to is not
10 in the nature of evidence seized at the time of arrest. And
11 Mr. Berrera was actually arrested in Venezuela and subsequently
12 turned over to the Colombian authorities. So certainly any
13 evidence obtained from him in connection with his arrest, that
14 would have been provided to or that was provided to Colombian
15 authorities and would have been provided to U.S. law
16 enforcement, and I'm actually not aware of there being anything
17 of that nature.

18 But Mr. Berrera has been -- well, we believe that
19 there may be, and I'm not in a position to represent to the
20 Court at this time what the nature might be, but we believe
21 there may be other information and evidence that could be
22 obtained from Colombian authorities that would be relevant to
23 the charge in the case.

24 THE COURT: How long do you think it would take to
25 obtain the evidence?

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1 MS. DABBS: We're prepared to submit the request right
2 away, and the return time on such requests can vary, but I
3 expect it to be at least a matter of a few months, probably
4 somewhere between three and six months would be my guess.

5 THE COURT: That's a long time. Can't we hasten it?

6 MS. DABBS: We can certainly make sure that -- look,
7 any time that a defendant is actually in a pending court
8 proceeding in the United States, we can make clear that we have
9 deadlines before the Court, and we're happy to do that. And
10 obviously, Judge, if there's something that we don't obtain on
11 the timetable set by the Court, then we understand that there
12 may be evidence that's not available to us to be used in a
13 proceeding here.

14 THE COURT: Mr. Oliva, any comments, suggestions?

15 MR. OLIVA: No, your Honor, I concur with the
16 government. I do -- I have been in communication with them in
17 regards to the probability of a Curcio and also in regards to
18 discovery. We're having very productive conversations.

19 THE COURT: Let's put them on different lines. The
20 Curcio hearing to ascertain the nature any of conflict, the
21 significance of it, is something that I would order as soon as
22 the government is ready, if they do challenge you. But in the
23 meantime, production will go forward.

24 MR. OLIVA: That's correct. I was addressing both
25 matters. As to both matters, I'm having productive discussions

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1 with the government, and I expect that both of those matters
2 are being resolved in a forthright manner, timely manner.

3 THE COURT: When should I see you again?

4 MR. OLIVA: Sorry, your Honor?

5 THE COURT: When, from your point of view, should I
6 schedule the next hearing?

7 MR. OLIVA: I would ask for at least 30 days. Then we
8 can report back to the Court in terms of our progress on both
9 ends.

10 THE COURT: Suppose I set a date in early September.
11 Would that be suitable?

12 MR. OLIVA: That would be perfect.

13 THE COURT: Ms. Dabbs?

14 MS. DABBS: That's fine for the government, Judge.

15 DEPUTY CLERK: September 4th at 11:00.

16 MR. OLIVA: Thank you, your Honor.

17 THE COURT: If, by reason of any discussions going on
18 between you, it's advantageous for everyone to postpone the
19 date, you needn't make a personal appearance, you can write me
20 a joint letter and ask for an adjournment and Ms. Jones can
21 schedule it.

22 Now I hope and I expect, Ms. Dabbs, that in the
23 interval, if any production comes into your hands, you produce
24 it immediately.

25 MS. DABBS: Absolutely, your Honor.

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1 THE COURT: And I don't think I can require Mr. Oliva
2 to make any motions or even announce any motions by September 4
3 at this time with the uncertainty as to what additional
4 production, if any, may be forthcoming. So we'll just have it
5 as a status conference on September 4. Is that satisfactory,
6 folks?

7 MR. OLIVA: Yes, your Honor, that's fair enough.

8 MS. DABBS: Yes, your Honor.

9 THE COURT: Motion?

10 MS. DABBS: Yes, your Honor, the government would ask
11 that time be excluded between today and September 4th, the next
12 conference date, which will permit the government and the
13 defense to continue our conversations regarding the possible
14 conflict issue, regarding discovery, and also a possible
15 disposition of the matter.

16 MR. OLIVA: No objection.

17 THE COURT: Without objection, and in the interest of
18 justice, so ordered. Thank you.

19 MR. OLIVA: Thank you, your Honor.

20 MR. NAFTALIS: Thank you, your Honor.

21 MS. DABBS: Thank you, your Honor.

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